

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MESA VISTA SOUTH TOWNHOME
ASSOCIATION,

Plaintiff and Appellant,

v.

CALIFORNIA PORTLAND CEMENT
COMPANY,

Defendant and Appellant.

G031082

(Super. Ct. No. 802639)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

The opinion filed in this case on May 4, 2004, is hereby ORDERED modified as follows:

1. At the end of the first full paragraph on page 2, after the sentence ending “the ultimate loss of the structural integrity of the homes,” add as footnote 1 the following footnote, which will require renumbering of all subsequent footnotes:

¹The defendant asserts that there is no basis for the conclusion that the trial court was concerned about the long-term structural integrity of the homes.

We disagree. In its statement of decision, the court stated, inter alia:

“While the evidence is persuasive that the concrete at Mesa

Vista South is damaged, it is difficult to appreciate damage that cannot be observed with the naked eye. The damage is largely sub-microscopic. . . .

Yet, it has been established that in time, and unless somehow prevented,

the concrete will disintegrate.” It also stated: “In the case at bar, the claimed defect is the presence of defective concrete (subject to Sulfate Attack) which, if attacked by an external sulfate-laden solution, will deteriorate and, over time, *fail to support the building.*” (Emphasis added.) In addition, the court said: “The court does find that the concrete foundations, including the concrete footings and integral slabs, are deteriorated and damaged and are experiencing destruction and deterioration of the concrete matrix, cracking of the concrete, and loss of strength of the concrete, and the concrete foundations will continue to deteriorate and suffer additional physical damage until such time as repair is implemented.” Finally, the court awarded damages for the repair of the concrete because the plaintiff “should not be required to bear the risk of *future* deterioration or disintegration of the concrete.” (Emphasis added.) The repair costs were for the implementation of a plan “to seal the concrete against *future* intrusion of sulfate solutions” (Emphasis added.) Clearly, the court was concerned not only with the present sub-microscopic damage to the foundations, but also with anticipated future damage and the ability of the foundations to “support the building.”

This modification does not effect a change in the judgment. The petition for rehearing is DENIED.

MOORE, J.

I CONCUR:

FYBEL, J.